

AS

**Notice of Allowability**

Application No.

10/090,715

Examiner

Eisa B Elhilo

Applicant(s)

PATEL ET AL.

Art Unit

1751

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed on 11/26/2003.
2. ☒ The allowed claim(s) is/are 1-4, 6-11 and 14-30.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_\_.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)          |
| 2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 6 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____.            |
| 3 <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No. _____  | 7 <input type="checkbox"/> Examiner's Amendment/Comment                             |
| 4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
|  | 9 <input type="checkbox"/> Other  |

### DETAILED ACTION

- 1 This action is responsive to the amendment filed on November 26,2003.
- 2 The cancellation of claims 5 and 12-13 is acknowledged. Pending claims are 1-4, 6-11 and 14-30.
- 3 Objection to the Abstract is withdrawn because the applicant submitted a new Abstract.
- 4 Objection to claim 2 is withdrawn because of the applicant's amendment.
- 5 The rejection of Double Patenting under 35 U.S.C. 101, is withdrawn because of the applicant's amendment (the amended claims require a contact time as ranging from a minimum of about 5 seconds to a maximum of about 2 minutes).
- 6 The terminal disclaimer filed on 12/23/2003 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of Serial No. 10/196,130; S/N 10/034,511; S/N 10/096,812; S/N 10/034,174 and S/N 10/095,657 has been reviewed and is accepted. The terminal disclaimer has been recorded.
- 7 The rejections of the claims under U.S.C. 103(a) are withdrawn because of the applicant's amendment.

### EXAMINER'S AMENDMENT

- 8 An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Milton Honig on January 9, 2004.

**In the claims:**

In claim 2, line 2, replace "i)" with -- A -- .

In claim 2, line 3, delete " : " .

In claim 2, line 11, delete " : " .

In claim 2, line 10, replace "ii" with -- B --.

In claim 2, lines 3-10 and lines 12-17, replace all " ; " with -- , --.

In claim 3, line 4, replace, "from about 0.1% to 0.5% of a coupler ; " with --from about 1% to about 90% of a conditioner base -- .

In claim 3, line 5, replace, "from about 1% to about 90% of a conditioner base" with -- further comprises from about 0.1% to about 0.5% of a coupler. --.

In claim 4, line 4, replace, "from about 0.5% to 2.5% of a volatile silicone ; " with --from about 1% to about 5% of an oxidative compound -- .

In claim 4, line 5, replace, "from about 1% to about 5% of an oxidative compound" with --further comprises from about 0.5% to 2.5% of a volatile silicone. --.

9      Claims 1-4, 6-11 and 14-30 are allowed.

**STATEMENT OF REASONS FOR ALLOWANCE**

10     The following is an examiner's statement of reasons for allowance:

The amended claims required that each number of the treatment be formulated with the identical mixture of the colorant composition that applied to the hair for a period of about 5 second to about 2 minutes. The prior art of record (US 5,376,146) alone or in combination with (US 4,104,021) fails to teach or disclose the claimed method as recited in the amended claims.

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Accordingly, the claimed subject matter as a whole would not have been obvious to one having ordinary skill in the art of hair dyeing formulations.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Elhilo  
January 9, 2004



MARGARET EINSMANN  
PRIMARY EXAMINER  
GROUP 1100